REMARKS

This Request for Continuing Examination is filed in order to have this Preliminary Amendment considered. This Preliminary Amendment will address the substantive issues raised in the Final Office Action mailed June 13, 2005.

The pending claims are claims 56-69. Independent claim 56 has been amended, above.

Applicant agrees with the Examiner's assessment of the effective filing date for the instant claims, namely September 27, 1995.

The claims have been amended to recite that the flow cell includes at least first and second planar portions defining at least a portion of the flow path wherein the first planar portion is disposed between the inlet port and the biochip and the second planar portion is disposed between the outlet port and the biochip. Express support can be found in the specification such as in Figure 6 wherein the finding number 72 points to the planar portions of the flow cell. The first and second planar portions would be on the right and left, respectively of the window 66, as the inlet and outlet are on the right and left, respectively, of the figure.

The references do not disclose this unique and advantageous structure. For example, Hollis discloses no window at all. However, at best for Hollis, a fair implication would be that the window would be adapted to contain the fluid on the device and would be a substantially planar window disposed across the entire device. Indeed, the window in Wilding is a substantially planar window disposed across the entire device. (Applicant notes for the record that Hollis does not disclose a "permeation layer" as claimed. Rather, Hollis discloses a "passivation layer" (see, e.g., column 19, line 33). The passivation layer of Hollis is a protective layer to avoid fluidic contact between the sample and the underlying electrode. In Applicant's device, a permeation layer permits fluidic

conduction. Applicant notes this merely because this point of distinction is key for other of Applicant's patents, and is not being argued here necessarily as a point of distinction for the currently presented claims.)

The biochip devices of the type disclosed and claimed herein are very precise requirements and tolerances for fluidic flow. Both of the references cited by the Examiner which arguably are within the same or affiliated art. Both teach a flat top planar surface. Applicant has discovered and claimed a unique structure in which the bottom of the window is planar to the biochip, but "offset from said first and second planar portions of the flow cell." Applicant respectfully submits that this structure is neither taught nor suggested, nor rendered obvious, by the art known to it.

Applicant requests that the undersigned be contacted by telephone at (949) 760-9600 if any matter remains.

Respectfully submitted,

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